IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1776 OF 2004

IN

SUIT NO.1612 OF 2004

Hiten Apartments Co-op.Hsg.Scty. Ltd. .... Plaintiff.

vs.

Bombay Suburban Electric Supply Ltd .... Defendants.

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Mr.Y.D.Mulani, for Plaintiff.

Mr.P.S.Sakhalkar, for Defendants.

**CORAM: D.K.DESHMUKH,J**.

**DATED: 21st April,2005**

**P.C**.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit for decree of possession of the premises from the defendants. The present Notice of Motion has been taken out by the plaintiff for order of

temporary injunction against tenant. An objection has been raised to the jurisdiction of this Court to entertain the suit. Therefore, in terms of the provisions of Section 9A of Civil Procedure Code, following preliminary issue is framed:-

(i) Do the defendants prove that this Court does not have jurisdiction to entertain the suit ?

2. I have heard the learned Counsel for both the sides on preliminary issue. Admittedly, there is agreement between the parties dated 9th October,1976 whereby the land was given on lease to the defendants for erecting a sub-station for the period of 25 years. This suit has been filed by the plaintiff for decree of possession against the defendants on the ground that the period of lease is over. Therefore, it is admitted position between the parties that the plaintiff is a landlord and the defendant is a lessee of the premises. If that is so, in view of the provisions of Section 33 of Maharashtra Rent Control Act, the Small Causes Court will have exclusive jurisdiction to entertain the suit filed by the landlord for possession, and therefore, the preliminary issue is answered in the affirmative.

3. The learned counsel for the plaintiff requests that plaint be returned to the plaintiff for presentation to the appropriate Court. It is accordingly, directed that the plaint be returned to the plaintiff for presentation

to the appropriate Court. The plaintiff is permitted to present the plaint to the appropriate Court i.e. Small Causes Court on or before 13th June,2005. As I have found that this Court does not have jurisdiction to entertain the suit, the Notice of Motion is disposed of.

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